

Ran Singh @ Ram Singh and ors. Vs. State

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Court : Delhi

Decided On : Apr-30-2007

Reported in : 2007CriLJ3052

Judge : R.S. Sodhi and; P.K. Bhasin, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 141, 147, 148, 149, 302, 304, 323 and 325; Code of Criminal Procedure (CrPC) - Sections 313 and 428

Appeal No. : Criminal Appeal No. 640 of 2004

Appellant : Ran Singh @ Ram Singh and ors.

Respondent : State

Advocate for Def. : Ravinder Chadha, APP and ; Jagdish Prasad, Adv.

Advocate for Pet/Ap. : Naresh Kaushik and; Bijendra Singh, Adv. in Criminal Appeal No. 640 of 2004 and;

Disposition : Appeal dismissed

Judgement :

P.K. Bhasin, J.

1. In these two appeals six accused persons have challenged their conviction under Section 302 read with Section 149 IPC and also under Section 323 read

with Section 149 IPC vide judgment dated 27-07-2004 as also the sentences imposed on them vide order dated 28-07-2004 by the learned Additional Sessions Judge, Delhi in Sessions case No. 179/01 arising out of FIR No. 528/97 of Patel Nagar police station. Since both these appeals arise out of the same judgment of conviction and they were heard also together we are deciding both the appeals by this common judgment.

2. The facts leading to the conviction of the six appellants for the murder of one Yoginder on 19-06-97 are that the deceased Yoginder was residing in house No. 2392/1, gali Mandir Wali, Shadipur, Delhi along with his father PW-12 Lakhan Singh, mother PW-6 Usha Devi and brother PW-7 Vinod Kumar. Appellant Intezar Hussain (the sole appellant in Criminal Appeal No. 722/2004) was a neighbour of the deceased. The five appellants in Criminal Appeal No. 640/04, who are all members of one family, were also the neighbours of the deceased. There was some dispute between the family of the deceased and the appellants in Criminal Appeal No. 640/04 over the cutting of a peepal tree which was there inside the house of the deceased by his father when some construction was to be carried out in their house. On the night of 19th June, 1997 accused Intezar Hussain parked his rehris in front of the house of the deceased. The father of the deceased (PW-12 Lakhan Singh) raised objection to the parking of the rehris by Intezar Hussain in front of his house. Upon that Intezar Hussain along with his brother Ansar (proclaimed offender) started beating him. When his wife (PW-6 Usha Devi) intervened to save him appellant-accused Smt. Rajbala came out of her house and she caught hold of PW-6 Usha Devi and took her in her grip and when PW-7 Vinod Kumar tried to save his mother from accused Rajbala she called her husband Ran Singh @ Ram Singh and her sons Kuldeep, Lalit @ Billoo and Rupesh @ Bhondhu (all of whom are the appellants in Crl. A. No. 640/04) and when they came out she told them that it was the appropriate time to finish off Lakhan Singh and his family. In the meantime Yoginder, other son of Lakhan Singh, came out of his house and then accused Rupesh, who was having a hockey in his hand, started beating Lakhan Singh and when Yoginder tried to save his father accused Ran Singh caught hold of him and accused Rupesh gave a hockey blow on his head. Accused Intezar and his brother Ansar (proclaimed offender) gave danda blows to Yoginder and accused Kuldeep and Lalit stabbed him with knives. On

getting injured Yoginder tried to run away from the spot to save himself but after some distance from the place of occurrence he fell down. His brother then took him to a nearby hospital where he was declared to have been brought dead. All these facts were narrated before the police by PW-7 Vinod Kumar, the brother of the deceased Yoginder, in his first information statement Ex. PW-7/A and on that basis formal FIR was registered. Vinod Kumar had also claimed that he had also intervened to save his parents and brother but he himself did not receive any visible injury and so he did not require any medical aid. The investigating officer recovered from the place of occurrence one piece of broken hockey. At the spot he also noticed that one rehri was parked there. As it was raining the investigating officer did not notice any blood at the spot. Post-mortem examination of the dead body of the deceased was conducted by PW-13 Dr. K.L.Sharma on 20-06-97 and he gave his report Ex. PW-13/A wherein he had noticed seven external injuries out of which injury No. 4 was a lacerated punctured wound on the chest below middle part of clavicle and injury No. 5 was an incised penetrating wound located over back of the right side chest. The autopsy surgeon gave his opinion that the cause of death was haemoid thorax as a result of injury No. 5 which was sufficient to cause death in the ordinary course of nature. According to him injuries No. 4 and 5 were caused by the sharp cutting penetrating weapon while other injuries were caused by hard blunt weapon and fist blows. Out of the seven assailants only six could be arrested by the police during investigation and since the seventh one, namely, Ansar could not be arrested he was got declared a proclaimed offender. As per the further prosecution case appellant-accused Kuldeep made a disclosure statement in police custody after his arrest and pursuant thereto he got recovered two guptis/daggers Ex. P-2 & 3, one broken hockey piece Ex. P-1 from the roof of his house. Accused Intezar also made a disclosure statement in police custody and got recovered dandas Ex. P-6 & 7. The two guptis/daggers got recovered by accused Kuldeep were shown to the autopsy surgeon for seeking his opinion about the possibility of the injuries found on the person of the deceased being caused by them with those weapons. The broken hockey piece and the two dandas were also shown to the autopsy surgeon who gave his opinion that the injuries No. 4 and 5, which were noticed on the body of the deceased at the time of post-mortem examination, were possible with the said two weapons and injury

No. 1, which was a lacerated wound behind the left ear of the deceased, could be caused with the afore-said hockey. The two guptis and the broken hockey piece got recovered by the accused persons were sent to CFSL during the investigation for Chemical analysis and on examination there human blood was detected on the recovered piece of hockey stick.

3. On the completion of the investigation the six appellants - accused were charge-sheeted and the trial Court framed charges under Sections 147 IPC, 148 IPC, 302/149 IPC, 325/149 IPC and 323/149 IPC. Since all the accused had pleaded not guilty the prosecution was called upon to adduce evidence in support of its claim. Twenty one witnesses were then examined by the prosecution out of whom three were the eye witnesses of the occurrence. The accused persons when examined under Section 313 Cr.P.C. denied the prosecution allegations in toto and pleaded false implication at the instance of the police in order to solve this case of blind murder. No evidence was adduced by any of the accused persons in defense. However, during cross-examination of PW-6 Smt. Usha Devi it was suggested to her on behalf of all the accused that her son Yoginder fell down in front of the shop of Surender Kumar and from there he was removed to the hospital and that no quarrel had taken place with accused Intezar and Ansar regarding the parking of rehri with her husband prior to the incident. The other defense taken by the accused persons was that after hearing the noise of abuses about twenty boys from Mohd. Community collected at the spot, they pelted stones and Usha Devi received injuries at the hands of those persons who were pelting stones and also that those 20 boys followed the son of PW-6 Smt. Usha Devi and some of them caused injuries in the main street at a distance of about 2000 yds. from the house.

4. After examining the prosecution evidence the learned trial Court found the evidence of all the eye witnesses to be trustworthy and reliable and relying upon their evidence as also the recovery of two guptis and a broken piece of blood stained hockey stick at the instance of accused Kuldeep and two dandas at the instance of accused Intezar Hussain held that all the accused persons had formed an unlawful assembly and they were sharing the common object which was to harm the family of Lakhan Singh and in furtherance of that common object and on

the exhortation of the accused Rajbala to finish the family of Lakhan Singh injuries were caused on the person of the deceased which resulted into his death and accordingly convicted them under Sections 302 and read with Section 149 IPC and also under Section 323 IPC read with Section 149 IPC and sentenced all of them to undergo life imprisonment for their conviction for the offences of murder and also to pay a fine of Rs. 3000/- each and for their conviction under Section 323/149 IPC they were awarded rigorous imprisonment for 10 days and were also imposed a fine of Rs. 500/- each. The substantive sentences of imprisonment were directed to run concurrently and the benefit of Section 428 Cr.P.C. was also extended to the accused persons.

5. Feeling aggrieved by the judgment of the trial Court five accused persons, namely, Ran Singh @ Ram Singh, Kuldeep , Lalit @ Billoo, Rupesh @ Bhondu and Rajbala filed Criminal Appeal No. 640/2004 while the sixth convicted accused Intezar Hussain filed Criminal Appeal No. 722/2004 and, as noticed already, now both these appeals are being disposed of together by this common judgment.

6. We have heard Shri Naresh Kaushik, learned Counsel for the appellants in Criminal Appeal No. 640/2004, Shri G.B.Sewak, learned Counsel for the sole appellant in Criminal Appeal No. 722/2004 and Shri Ravinder Chadha, learned Additional Public Prosecutor representing the State and with their assistance we have also gone through the relevant prosecution evidence which only was referred to from both the sides during the course of hearing of these appeals.

7. It was not disputed by the learned Counsel for the appellant that the deceased Yoginder's death was homicidal. That fact is even otherwise fully established from the evidence of the autopsy surgeon PW-13 Dr. K.L.Sharma. The injuries noticed by him on the body of the deceased at the time of post-mortem examination are as follows: EXTERNAL INJURIES

1. Lacerated wound 1 x 1 cm was present with bruised around below and behind the left ear.

2. The lips were bruised, nose had an abrasion 1 x 1 cm with swelling.

3. A linear with bruised around over top of the left shoulder 4 x 1 cm.
4. There was lacerated punctured wound circular in disposition 1.5 x 1.5 cm over chest below middle part of left clavicle (muscle deep only).
5. Incised penetrating wound 2.5 x 1 cm., upper margins were shelved and lower margins were flap cut, blood was oozing from the wound and it was located over back of the right side chest, horizontal being 4 cm away from middle part of the right scapular border, lower margin being 130 cm. above right heel. Both angles were acutely cut.
6. Two upper central incisors were broken with laceration of the gums. Bleeding was seen.
7. Nasal bones were fractured and bleeding was present.

INTERNAL EXAMINATION

Head and brain were normal, neck and its structures were normal except wind by contained frothy blood.

Chest: Injury No. 5 after cutting skin, intercostal muscle and inner border of 5th and 6th ribs near right side vertebral column, entered posterior upper border of right lower lobe of lung, passed through whole thickness and came out through base of the lung after cutting plura. This injury further cut the right dome of diaphragm and entered the convex border of liver and penetrated up to the depth of 8 cm. The total depth was 25 cm. and plane was upside downwards.

We have already referred to the opinion of the autopsy surgeon regarding the cause of death. From the afore-said injuries and the opinion of the autopsy surgeon there is no manner of doubt that the death of the deceased Yoginder was homicidal.

8. Learned Counsel for the appellants, however, seriously challenged the correctness of the findings of the learned Trial Court holding the appellants guilty of the offence of murder. It was contended that the learned Trial Judge had not properly appreciated the flaws in the evidence of the three eye witnesses. It was

also contended that on proper appreciation of the evidence of the three eye witnesses they could not be said to have been the eye witnesses and their claim of being eye witnesses was absolutely false. Learned Additional Public Prosecutor for the State, on the other hand, while supporting the judgment of the Trial Court submitted that all the three eye witnesses were rightly relied upon by the Trial Court and that there is no infirmity at all in their evidence which could discredit them and, therefore, the learned trial Judge has rightly convicted the appellants.

9. Before dealing with the submissions of the counsel for the parties in detail and in order to find out whether the prosecution had been able to establish its case against the appellants the evidence of the eye witnesses needs to be noticed and then independently analysed by this Court. We shall first take up the testimony of PW-7 Vinod Kumar, who is the brother of the deceased and also the first informant of the incident to the police. After narrating the initial incident between his father(PW-12) and accused Intezar and his brother Ansar(PO) PW-7 over the parking of rehris by Intezar in front of their house deposed that when his mother Usha Rani(PW-6) came out of the house in order to save his father accused Raj Bala, the wife of accused Ran Singh, who were also their neighbours, came outside his (PW-7's) house and started grappling with his mother. He was standing outside his house at that time and when he went to rescue his mother, accused Raj Bala gave a call to her husband and sons. Accused Ran Singh and his sons, namely, Kuldeep, Lalit and Rupesh came outside their house and then accused Raj Bala made a 'lalkara' and exhorted her sons and her husband that there was an opportunity to finish Lakhan Singh and his family. On hearing the noise his elder brother Yoginder(the deceased) came outside. PW-7 further deposed that accused Kuldeep and Lalit were carrying churris in their hands at that time while accused Rupesh was carrying hockey stick and accused Intjar and Ansar were carrying dandas in their hands. Accused Rupesh started beating his father Lakhan Singh with hockey stick and when his elder brother Yoginder tried to save his father, accused Ram Singh @ Ran Singh caught hold of his brother Yoginder and accused Lalit then stabbed Yoginder with churri on his chest while accused Kuldeep stabbed him on his back. Accused Rupesh hit his brother Joginder with hockey stick on his head and accused Intjar and Ansar hit his brother with dandas. His brother tried to run away in order to save himself but he fell down at some

distance and then his father directed him(PW-7) to rush his brother Yoginder to DDU hospital. PW-7 further deposed that finding the serious condition of his brother he removed him to Khera hospital in Pandav Nagar where the concerned doctor declared his brother Yoginder as brought dead. He also deposed that in the incident his parents(PWs 6 and 12) also sustained injuries and he himself sustained invisible injuries but he did not get himself medically examined. The police recorded his statement Ex. PW-7/A at Khera Hospital.

10. Now we come to the evidence of the other injured eye witness. He is PW-12 Lakhan Singh, the father of the deceased. He has deposed that on 19.6.1997 he was residing at H. No. 2392/1 Mandir Wali Gali, Shadipur, Delhi which was purchased by him in October, 1996 from the son of Maha Singh, who was related to accused Ran Singh and his family. Accused Ran Singh was also residing along with his family just next to his house. Accused Ran Singh and his wife Raj Bala were claiming that the house purchased by him belonged to their family and threatened him with dire consequences. In March, 1997 when he started constructing the first floor of the said house, he cut the pipal tree in his house for making construction on which he was again threatened by Ran Singh and his family for having removed the tree as they claimed that the peepal tree belonged to the ancestors of their family. He also deposed that during the construction of house 2-3 members of family of Ran Singh called him to stop the construction but the matter was reconciled. He further deposed that after the construction was over he started residing in the said house from the first week of June, 1997. On 19.6.1997 accused Intjar, who was residing with his brother Ansar(proclaimed offender) as tenant of one Sunil, who was related to accused Ran Singh, parked rehris in front of his(PW-12's) house due to which the passage was blocked. He requested Intezar to remove the rehris and park them on one side and on that accused Intjar along with his brother Ansar started abusing and beating him with danda. He further deposed that at that time his wife Usha(PW-6) also came and tried to take him out of the clutches of the aforesaid two accused persons and at the same time accused Raj Bala also came to the spot and caught hold of his wife and started beating her. Accused Raj Bala also gave lalkara to her children by stating 'Aa jao, aaj moka hai, Lakhan Singh ke pariwar ko khatam kar do' and on hearing that accused Ran Singh, Kuldeep, Lalit and Rupesh came there. His sons

Yoginder (the deceased) and Vinod(PW-7) also came there to save them. Accused Rupesh was having a hockey in his hand, whereas Lalit and Kuldeep were having churri in their hands and soon after reaching the spot, accused Ran Singh caught hold of his son Yoginder. Rupesh gave a hockey blow on the left side of the head of Yoginder near his ear and Lalit gave a churri blow on the left side of his chest. Kuldeep gave a churri blow on the back of Yoginder near left shoulder. Yoginder tried to run with a view to save himself but fell down just after about 15 paces. He further deposed that Intjar and Ansar had also given danda blows to Yoginder. Accused Intjar and Ansar gave danda blows to him(PW-12) also on his head. Accused persons thereafter ran away thinking that his son Yoginder had succumbed to injuries. Vinod removed Yoginder in TSR to the hospital. PW-12 also deposed that during this scuffle his wife had also received injuries and because of the blow given by accused Raj Bala to his wife she had lost her two teeth of her lower jabra. He thereafter deposed that he along with his wife went to the DDU hospital for treatment and MLC was also prepared by the doctor in respect of injuries. He also deposed that he was waiting for his son Yoginder in the hospital but his son did not reach hospital and when he was coming back to his house he checked about his son in Khera hospital and came to know that his son was brought dead in the said hospital.

11. The third eye witness PW-6 Usha Devi is the mother of the deceased. She has deposed that there was a peepal tree inside their house which they had purchased from Maha Singh, uncle of accused Ran Singh but since accused Ran Singh had cut off two of its branches they totally uprooted the peepal tree. Accused persons took strong exception to that claiming that tree was planted by their forefathers. She also deposed that when they started constructing their house the accused persons had extended threat to them that they will have to face the consequences for cutting the peepal tree. She further deposed that on 19-06-97 at about 10.15 p.m. when she was present on the first floor of her house accused Intjar Hussain parked two/three rehires in front of their house blocking the passage of their house and when her husband Lakhan Singh objected to that accused Intjar Hussain and Ansar started beating her husband with dandas on which she came down to save her husband. At that time Raj Bala, wife of accused Ran Singh, came out of her house and took her(PW-6) in her grip and called her husband Ran Singh and her

sons Rupesh, Lalit and Kuldeep and when they came out from their house. Accused Intjar Hussain and Ansar started raining danda blows on her husband. Accused Rupesh was carrying a hockey stick and he attacked her husband with the hockey stick. On hearing the noise her two sons, namely, Yoginder(the deceased) and Vinod came out from their house in order to save their father and then accused Ran Singh caught hold of her son Yoginder and accused Rupesh attacked Yoginder with hockey stick on his head. Accused Lalit then stabbed Yoginder with 'churi' on the front side of his chest and accused Kuldeep stabbed Yoginder with 'churi' on his back. Yoginder tried to save himself and started running but he fell down after a short distance. Her husband told her son Vinod(PW-7) to rush her son Yoginder to DDU hospital and her son Yoginder was rushed to DDU hospital by her son Vinod in a three wheeler scooter. She also deposed that she along with her husband went to DDU hospital for medical treatment as her tooth broken in that incident. After reaching DDU hospital they came to know that their son Yoginder had been taken by Vinod to Khera hospital and after getting treatment from DDU hospital when they came to Khera hospital they came to know that Yoginder had died. She further deposed that at the time of the incident accused Raj Bala had uttered that today it was a golden opportunity to wipe out the family of Lakhan Singh.

12. This is the only evidence referred to before us during the course of arguments from both the sides. Learned Counsel for the six appellants in CrI. A. No. 640/04 had contended that the entire prosecution case is unbelievable since PW-12 Lakhan Singh was an Assistant Sub-Inspector in Delhi Police and so it is not possible to accept that the accused persons would have dared to fight with a police officer and kill his son. In any case, the evidence of the eye witnesses is unreliable for many reasons. It was submitted that as far as PW-7 Vinod Kumar is concerned his evidence should not be relied upon since his abnormal conduct at the time of incident in not making any attempt to save his father and brother when they were being assaulted makes his claim of being an eye witness highly doubtful. It was also contended that even though he claims to have received invisible injuries in the incident but there is no proof submitted by the prosecution to substantiate the same and the non-production of any evidence to show that he had also received an injury in the incident also makes his evidence quite doubtful.

Learned Counsel also contended that if actually PW-7 had been present at the time of the alleged incident and had received an injury he would have definitely got himself medically examined but he himself has claimed in his examination-in-chief that he had not got himself medically examined. Learned Counsel, however, submitted that presence of PW-7 at the place of incident becomes doubtful also for the reason that his mother PW-6 Usha Devi had admitted in her cross-examination that she had seen Vinod for the first time at Khera Hospital. It was also contended that PW-7 Vinod Kumar has although deposed that he had taken his brother Yoginder to the hospital but that statement of his gets falsified from the MLC of the deceased which was prepared at the time of his examination by the doctor in which the names of the assailants were not mentioned which would have been there if Vinod had been an eye witness and if actually he had gone to the hospital with the deceased. Regarding the evidence of PW-6 Usha Devi and her husband PW-12 Lakhan Singh the submission of learned Counsel for the appellants was that both of them should be disbelieved because both of them do not corroborate each other inasmuch as PW-12 claims that his wife Usha Devi had lost her two teeth because of the blow given to her by accused Rajbala while Usha Devi although claimed in her examination-in-chief that in the incident her tooth was broken not that it was because of Rajbala beating her and during her cross-examination she had claimed that she had not sustained very serious injuries. Learned Counsel further contended that in cross-examination PW-6 had also admitted that she had not tried to lift her injured son nor had she tried to console him and she also did not get him medically treated and that abnormal conduct of hers belies her claim also of being an eye witness of the incident because it is highly improbable that a mother on seeing her son being stabbed would not even try to save him. Learned Counsel also contended that there are other material inconsistencies also in the evidence of the three eye witnesses inasmuch as PW-6 Usha Devi has deposed that when on the call of Rajbala her husband and sons came out of their house accused Intezar Hussain and his brother Ansar had started giving danda blows to her husband(PW-12) and similarly PW-12 Lakhan Singh himself has also claimed that Intezar Hussain and Ansar had given him also danda blows on his head but PW-7 has not claimed that Intezar Hussain and Ansar had also assaulted his father after other accused had come out of their

house.

13. It was also submitted that PW-6 Usha Devi and PW-7 Vinod have deposed that accused Rupesh had hit PW-12 Lakhan Singh with a hockey but PW-12 Lakhan Singh himself has not claimed that he was hit with a hockey by accused Rupesh. Learned Counsel also contended that as far as accused Rupesh is concerned it is the prosecution case that he had assaulted the deceased and PW-12 with a hockey but in evidence two broken pieces of hockey were produced out of which one piece was allegedly got recovered by accused Kuldeep and not by Rupesh and other broken piece was shown to have been recovered from the spot. However, none of the witnesses has claimed that at the time of incident the hockey used by Rupesh had broken with the force with which it was struck on the head of the deceased or otherwise and in any case to none of the eye witnesses the broken piece of hockey got recovered by Kuldeep was shown to have it identified as the weapon of offence. It was also contended that even though as per the FSL report some human blood was noticed on the broken piece of hockey which Kuldeep had got recovered but considering the fact that no blood was detected on the two churis which also he had allegedly got recovered it becomes highly improbable that blood could have been found on the hockey when it was not found on the churis one of which had, as per the prosecution case, pierced up to the lungs of the deceased and that shows that the police had thrown some blood on the piece of hockey. So, no reliance can be placed on the FSL report also and based on that accused Rupesh cannot be implicated nor can that recovery be used as a corroborative evidence. So the role attributed to Rupesh by eye witnesses definitely becomes highly doubtful and consequently their evidence in entirety should have been discarded.

14. Learned Counsel also submitted that as far as accused Rajbala is concerned no overt act has been attributed to her except that she gave a call to her family members to come out of their house when accused Intezar Hussain and Ansar were giving beatings to PW-12 Lakhan Singh. It was also contended that all the three eye witnesses have given inconsistent statements regarding what all Rajbala did at the time of occurrence inasmuch as PW-6 Usha Devi has deposed that when she rushed to the spot on seeing her husband being beaten by Intezar

Hussain and Ansar accused Rajbala also came out of her house and she(Rajbala) took her in her grip and then she called her husband and her sons while PW-7 Vinod has deposed that when his mother came to the spot to save his father accused Rajbala on coming out of her house had started grappling with his mother and when he went to rescue his mother Rajbala called her husband and sons. Usha Devi does not claim that Vinod had come to rescue her. PW-7 says that when her husband and three sons came out of their house accused Rajbala then exhorted them that they had got an opportunity to finish Lakhan Singh and his family. Learned Counsel submitted that although PW-6 had also stated in her chief-examination that at the time of incident Rajbala had uttered that it was a golden opportunity to wipe out the family of Lakhan Singh but she did not state as to whether she had said so before the coming of her husband and her sons out of their house or after they had come while her husband PW-12 Lakhan Singh has claimed that Rajbala had caught hold of his wife and had also started beating her and then called her children by shouting that they had got an opportunity and they should come out and finish off the family of Lakhan Singh and hearing that lalkara her husband and three sons had come to the spot. Learned Counsel also contended that when the deceased Yoginder came to the spot and was allegedly assaulted by Kuldeep and Lalit Rajbala did not do anything at that time and further that while PW-12 has deposed that because of the blow given by accused Rajbala to his wife Usha Devi her two teeth had broken but PW-6 Usha Devi herself has not claimed that Rajbala had given any blow to her which broke her teeth and she had simply stated that Rajblala had taken her in her grip when she (PW-6) had come out of her house to save her husband. There is no medical evidence also to show that teeth of Usha Devi were broken in the incident. As far as PW-7 Vinod is concerned he has also not claimed that Rajbala had beaten his mother and that because of that beating her mother's teeth had broken. It was also pointed out that PW-7 has claimed that Rajbala had called out her husband and sons when he(PW-7) had gone to save his mother when Rajbala was grappling with her but PW-6 does not claim that Rajbala had called out her husband and sons when Vinod had come to save her when Rajbala had taken her in her grip. She did not claim that Vinod had come to her rescue. In these circumstances it becomes clear that as far as accused Rajbala and Rupesh are concerned they have been clearly

roped in falsely just to invoke Section 149 IPC. Learned Counsel submitted that these flaws in the prosecution evidence in respect of accused Rajbala and Rupesh are sufficient enough to at least give them the benefit of doubt.

15. Another submission made by learned Counsel for the appellants was that the prosecution has not examined any independent witness of the incident which is alleged to have taken place outside the house of the deceased and based on the evidence of the family members of the deceased only the conviction of the appellants cannot be sustained. It was also argued that the prosecution has not been able to attribute any motive to the appellants for causing the death of Yoginder and that even though the eye witnesses had claimed that at some time there was some ill feeling between the appellants and the complainant party on account of cutting off of the peepal tree in the house of the complainant party which the appellants claimed to have been planted by their(appellants') ancestors but PW-12 Lakhan Singh, the father of the deceased, had also deposed that the parties had already reconciled which shows that that chapter was over and thereafter there could be no occasion for the appellants to have killed the deceased. Half heartedly it was also contended that the prosecution story that Kuldeep and Lalit had caused injuries to the deceased with churis becomes doubtful because the churis which allegedly were got recovered by accused Kuldeep were not shown to any of the eye witnesses for identification as weapons of offence. In any event, even if it is accepted that the incident did take place in the manner as deposed to by the eye witnesses none of the accused persons could be convicted for the offence of murder since the fatal injury was not on any vital part of the body and considering the fact that none of the other injuries also on the person of the deceased was caused on any vital part of his body it could not be said that the accused persons had intended to kill him and, so, as far as the nature of offence in respect of the deceased is concerned the same can at the highest be said to be one under Section 304(II) IPC and certainly not under Section 302 IPC. Even for the offence under Section 304(II) IPC all the appellants can not be convicted by invoking Section 149 IPC since there are no circumstances brought out on record by the prosecution from which it could be inferred that the common object of the so-called unlawful assembly of the appellants was to cause the death of Yoginder. Section 34 IPC also cannot be invoked in the facts and circumstances

of the case since it cannot be said that all the appellants had shared common intention to cause the death of the deceased Yoginder and, therefore, all the appellants have to be dealt with as per their individual roles in the incident, if at all this Court accepts the prosecution version. To bolster his submissions regarding the non-applicability of Section 149 IPC learned Counsel for the appellants placed reliance on the judgments of the Hon'ble Supreme Court reported as Gangadhar Behera and Ors. v. State of Orissa : 2003 CriLJ41 ; Mukati Prasad Rai @ Mukti Rai and Ors. v. State of Bihar(now Jharkhand) (2004) 13 SCC 144; and Munna Chanda v. State of Assam : 2006 CriLJ1632 .

16. Learned Counsel for the appellant Intezar Hussain adopted all the afore-said arguments advanced by the learned Counsel for the other five appellants. Additionally it was contended by him that Intezar had no dispute with the complainant party and on the day of the incident there was a minor quarrel between this appellant and PW-12 Lakhan Singh and he had no role to play thereafter. PW-6 had admitted in cross-examination that prior to this incident there was never any quarrel with Intezar and Ansar(PO) over parking of rehris and so Intezar cannot be said to have become a member of the so-called unlawful assembly of the five other appellants with whom only, according to the prosecution case itself, the complainant party had a dispute over the cutting off of the peepal tree. It was further contended that the appellant Intezar Hussain cannot be attributed the knowledge that when the quarrel between him and PW-12 was going on the other five appellants would come out of their house and start assaulting the complainant party because of their own grudge against them. Learned Counsel further contended that the evidence of the eye witnesses in respect of this accused regarding his assaulting the deceased is not consistent. It was also contended that even if this Court accepts the version of the eye witnesses that Intezar Hussain had assaulted the deceased also even then he would be guilty only for the commission of the offence under Section 323 IPC and certainly not for the offence of murder with the aid of Section 149 IPC.

17. No other points were raised on behalf of any of the six appellants.

18. To combat the afore-said arguments advanced on behalf of the appellants regarding the truthfulness of the evidence of the eye witnesses and applicability of Section 149 IPC learned additional public prosecutor submitted that the evidence of the three eye witnesses is wholly reliable and cannot be rejected because of their being family members of the deceased. It was contended that all of them corroborate each other on all material aspects and the fact that PW-7 Vinod Kumar has not claimed that Intezar Hussain and the proclaimed offender Ansar assaulted his father also as has been deposed to by PWs 6 and 12 will not make his entire evidence unreliable. It was further submitted that the death of the deceased cannot be said to be falling within Section 304 IPC considering the fact that the deceased was given one knife blow on the chest and one knife blow was given on the back side of the chest with such force that the weapon pierced into the body right up to the lungs and in that process liver of the deceased was also damaged and so the only conclusion which can be arrived at is that it is a case of murder and in the facts and circumstances of the case none of the exceptions under Section 300 IPC is attracted. It was also contended that Kuldeep had caused knife injury on the back of the chest of the deceased and that injury proved to be fatal and it cannot be said that he had not intended causing that injury or that he did not know it to be likely that that injury would cause the death of the deceased. It was also contended that as far as PWs 6 and 12 are concerned they are injured witnesses and so their evidence cannot be discarded lightly. In respect of this submission reliance was placed on three judgments of the Hon'ble Supreme Court in Bonkya and Ors. v. State of Maharashtra : 1996 CriLJ414 Sardul Singh and Ors. v. State of Punjab : 1994 CriLJ626 and Mohar Singh v. State of UP : 2002 CriLJ4310 . Regarding the applicability of Section 149 IPC in respect of all the six appellants the submission of the Additional Public Prosecutor was that considering the fact that when accused Rajbala called out her husband and sons saying that they should come out as they had an opportunity that day to finish off Lakhan Singh and his family accused Kuldeep and Lalit came out armed with churis while accused Rupesh had a hockey stick and even though accused Ran Singh did not have any weapon with him he had caught hold of the deceased when he had tried to save his father and thereafter accused Kuldeep and Lalit had given him churi blows and accused Intezar and Ansar had also given danda blows

on the person of the deceased and all that shows that all the seven persons had at that stage formed an unlawful assembly for committing the murder of the deceased. It was also contended that considering the fact that the two accused gave churi blows on the person of the deceased and one hit him with hockey stick and two gave danda blows to him and when the father of the deceased wanted to rescue him he was also badly beaten up it becomes evident that the common object of that unlawful assembly of the seven persons was to finish off the entire complainant party and consequently all the accused persons had been rightly convicted for causing the death of Yoginder and injuries to his parents. It was also contended by the learned additional public prosecutor that even if it is accepted that not all the appellants had decided to cause the death of the deceased after forming an unlawful assembly but it can definitely be said that the appellants who were armed with dandas and hockey stick and the two who were un-armed knew that the offence of murder was likely to be committed since the appellants Kuldeep and Lalit were having churis when they came out of their house on the lalkara of their mother for finishing off the entire family of Lakhan Singh and, therefore, second part of Section 149 IPC would definitely get attracted even in respect of the appellants Ran Singh, Rajbala, Rupesh and Intezar Hussain. In any event, accused Kuldeep and Lalit, both of whom inflicted injuries to the deceased with churis on the vital parts of his body and the injury caused by Kuldeep was so forceful that the churi had pierced up to the lungs and liver was also damaged, can definitely be said to have caused the death of Yoginder in furtherance of their common intention and so both of them can, in any case, be convicted under Section 302/34 IPC.

19. We have given our thoughtful consideration to the afore-said submissions advanced on behalf of both the sides. We will first proceed to decide whether it is a case of murder, as is the case of the prosecution, or culpable homicide not amounting to murder falling within Part-II of Section 304 IPC, as is the stand of the appellants. As noticed already, the prosecution evidence is to the effect that the deceased had sustained a knife injury on the back side of his chest and that injury as per the autopsy surgeon was sufficient to cause the death of the deceased in the ordinary course of nature. As per the post-mortem report because of that injury the lung and the liver of the deceased had been damaged from which it can be

safely concluded that that injury was caused by the assailant with the intention of causing the death of the deceased. The intention to cause death of the deceased by the assailants in furtherance of their common object is also clear from the fact that the deceased was given a knife injury on his chest also and he was also beaten with dandas. In these circumstances, we do not find any force in the submission of the learned Counsel for the appellants that the death of Yoginder would be culpable homicide not amounting to murder.

20. We shall now proceed to examine if the evidence of the three eye witnesses establishes that the incident in question had taken place in the manner as narrated by them and whether from their evidence it can be said that all the six appellants along with the proclaimed offender had formed themselves into an unlawful assembly with the common object of causing the death of the deceased Yoginder. On an independent and careful analysis of the evidence of the three eye witnesses we are of the view that despite the fact that three eye witnesses are not consistent regarding the role played by accused Rajbala and Rupesh their entire evidence cannot be discarded for that reason. In one of the judgments cited by the counsel for the appellants itself : 2003 CriLJ41 it was held by the Hon'ble Supreme Court that the maxim 'falsus un uno, falsus in omnibus' has not received general acceptance nor has it become rule of law in this country and so even if the evidence of a witness is found to be deficient in respect of some accused the remaining accused can still be convicted on the same evidence. The evidence of all the three eye witnesses in the present case is reliable, cogent and fully trustworthy in respect of the four accused - appellants, namely, Ran Singh, Kuldeep, Lalit and Intezar Hussain. Their credibility cannot be doubted for any of the reasons put forth by the learned Counsel for the appellants, as far as the involvement of accused Intezar Hussain, Ran Singh, Kuldeep and Lalit is concerned. The evidence of the three eye witnesses, which we have already narrated in extenso, clearly shows that all of them have supported each other's version on material aspects of the prosecution case and particularly the assault on the deceased Yoginder by accused Kuldeep, Lalit, Intezar and his brother, the proclaimed offender. Despite gruelling cross-examination they could not be shaken nor anything could be elicited from them which could discredit them. No contradictions or improvements with reference to their version before the police in

respect of the occurrence could be brought on record which fact strengthens our conclusion that all of them have given a truthful version of the occurrence and we have no hesitation in accepting the same as far as accused Ran Singh and his two sons, Kuldeep and Lalit, and Intezar Hussain are concerned. As far as PW-7, the brother of the deceased is concerned his testimony has been attacked on the ground that he did not try to save his father and brother when they were being assaulted by the accused persons and that abnormal conduct of his renders his presence at the place of occurrence doubtful. We, however, do not find any force in this submission also and the evidence of PW-7 cannot be discarded for this reason put forth. It is quite possible that when this witness saw his father and brother being assaulted by seven persons he may have got frightened and did not gather the courage to come to their rescue. In any case, how someone should react at the time of this kind of an occurrence is not for the Courts to decide. Different persons can react differently on seeing the same occurrence and in a situation like the present one where the witness did not react in a particular manner in which according to learned Counsel for the appellants he should have reacted it cannot be said that he was not a witness of the occurrence resulting in the death of his brother. He was less than 18 years of age at the time of the incident and his not gathering courage to stop the assailants who had deadly weapons with them cannot be said to be an abnormal conduct. Another reason put forth by the learned Counsel for the appellants for discarding the evidence of PW-7 Vinod was that the MLC prepared in respect of the deceased at Khera Hospital(Ex. PW-15/A) does not show the names of the assailants and, therefore, that fact belies his claim of being an eye witness. Learned Counsel submitted that if actually PW-7 had witnessed the incident and had also taken the deceased to the hospital the names of the assailants would have been mentioned in the MLC by the concerned doctor. There is no doubt that the MLC of the deceased does not mention the names of the assailants but that fact is not sufficient to hold that PW-7, in fact, did not witness the incident and did not even take him to the hospital. It was held by the Supreme Court in Bhargavan and Ors. v. State of Kerala 2004 CrI.L.J. 646 that evidence of a witness who claims to have taken the deceased to the hospital cannot be discarded for the reason that the names of the assailants are not disclosed to the doctor by that witness since the primary duty of the doctor

is to treat the patient and not to find out by whom the injury was caused. Similar view was taken by the Hon'ble Supreme Court in *Pattipati Venkaiah and Ors. v. State of Andhra Pradesh* : 1985 CriLJ2012 . therefore, non-disclosure of the names of the appellants - accused by PW-7 to the doctor who examined the deceased at Khera Hospital does not render his testimony in any way unreliable or doubtful.

21. As far as PWs-6 and 12 are concerned their evidence is being sought to be discarded on the ground that they did not accompany their injured son to the hospital. In our view, for this reason the evidence of these two eye witnesses also cannot be considered to be unreliable. As has been noticed already, while narrating their evidence it is clear that when the incident was over they immediately told their other son Vinod to take Yoginder to DDU Hospital and then Vinod had taken Yoginder in a three wheeler scooter and then both these witnesses had also gone to DDU Hospital independently on a two wheeler scooter. PW-7 has claimed that since Khera Hospital was nearer to the place of occurrence he had decided to take his brother to that hospital and accordingly he took his brother to Khera Hospital and not to DDU Hospital and that is why PWs 6 and 12 on reaching DDU Hospital did not find them there. So, in these circumstances it cannot be said that the parents of the deceased acted abnormally in not going along with their injured son in the same three wheeler scooter in which he was taken by Vinod. PWs 6 and 12 were both injured in the same occurrence and, therefore, their presence at the place of occurrence where the deceased was fatally assaulted is beyond any doubt. The occurrence took place outside their own house during the late night period when they were expected to be present at their house and so their presence as also that of their son Vinod(PW-7) at the place of occurrence was quite natural. On behalf of appellants in Criminal Appeal No. 640/04 it was put to PW-6 Usha Devi in her cross-examination that she had received injuries at the hands of some boys of Mohammadon community who had collected at the spot after hearing the noise of abuses and had pelted stones. This suggestion, which PW-6 denied, is an admission on the part of the accused persons that PW-6 was actually injured. It is now well settled that evidence of witnesses who are injured in some incident deserves to be accepted without any corroboration unless the accused is able to lay a strong foundation for discarding

their evidence. The judgments of the Hon'ble Supreme Court relied upon by the prosecutor in this regard do fortify this view. However, the plea taken by the accused persons that some mohammaden boys had injured PW-6 cannot be accepted since they have not substantiated the same by adducing any evidence. In fact, when they were examined under Section 313 Cr.P.C. they did not even take this plea at that time which shows that they had given up that stand and earlier they had taken a false plea which also shows their guilty mind. The MLCs Ex. PW-14/A and B in respect of PWs 6 and 12 respectively also corroborate their version that in the incident they had also got injured. In the cross-examination of PW-6 it was put to her that to begin with abuses were hurled between her husband on one side and accused Intezar Hussain and his brother Ansar on the other. That suggestion is also an admission on the part of the appellants about the correctness of the version of the initial incident when PW-12 Lakhan Singh objected to the parking of rehris in front of his house by Intezar Hussain and was then beaten up by Intezar Hussain and his brother. It was also suggested to PW-6 in her cross-examination that in the incident Ran Singh, Rajbala and Kuldeep had also received injuries in the incident. The witness stated that she was not aware about that. This suggestion put to this witness also confirms that the incident did take place in the manner as deposed to by the witness. As far as the plea taken by accused that they had also received injuries in the same incident is concerned after putting this suggestion to PW-6 the same was not sought to be adopted when they were examined under Section 313 Cr.P.C. which shows that on this aspect also a false stand had been taken and that is also a strong circumstance to persuade us to accept the testimony of these eye witnesses. The evidence of the eye witnesses can also not be rejected for the reason that PW-7 Vinod does not claim that accused Intezar Hussain and Ansar had assaulted his father Lakhan Singh with dandas as has been claimed by his mother PW-6 Usha and PW-12 Lakhan Singh himself. PW-7 in his cross-examination had claimed in answer to a question that 'when my father was being beaten by accused Intezar Hussain and Ansar with dandas my mother had gone to save him, but at that time I was standing outside my house but I had not gone to save my father at the spot.' Thus, PW-7 also claims that his father was beaten by Intezar Hussain and Ansar also and, therefore, it cannot be said that there is any inconsistency in the versions of

the three eye witnesses, as was the submission of the learned counsel for the appellants.

22. The evidence of the eye witnesses in respect of the assault on the deceased gets duly corroborated by the report of the autopsy surgeon, Ex. PW-13/A and as far as injuries to Usha Devi and Lakhan Singh are concerned the accused had themselves claimed that they were injured although not by them but by some other boys, which plea of theirs we have found to be false. Their evidence also gets corroborated from the prompt lodging of the FIR in which PW-7 narrated the manner in which the incident took place. So, we have no hesitation in accepting the evidence of the eye witnesses in respect of accused Ran Singh, Intezar Hussain, Kuldeep and Lalit. However, considering the inconsistencies highlighted by the learned Counsel for the appellants regarding the role of accused Rajbala and Rupesh we feel inclined to extend benefit of doubt to them which doubt we consider to be fair. It is a matter of common knowledge that at times there is a tendency on the part of the prosecution to exaggerate the guilt of other side and to implicate persons considered to be sympathisers of the real assailants. In the facts and circumstances of the present case it appears to us that the complainant party has put forth an exaggerated version by attributing some overt acts to accused Rajbala and Rupesh so that they also could be implicated as being members of the unlawful assembly.

23. We also do not find ourselves in agreement with the submission of the learned Counsel for the appellants that this is a case of no motive at all. As noticed already, all the three eye witnesses have claimed that there was a dispute between the families of the complainant side and the appellants of Criminal Appeal No. 640/04 over the cutting of peepal tree by the complainant side from their house. It has also been claimed by PW-6 that when they started constructing their house the accused persons had extended threat to them saying that they will have to face the consequences for cutting the peepal tree. This part of her statement could not be got falsified in her cross-examination. PW-12 Lakhan Singh has also deposed that because of the removal of the peepal tree by him from his house the accused (PWs 6 and 12 were both referring to the appellants in Criminal Appeal No. 640/04) had threatened him when he was constructing his house but at that

time he had advised his wife to maintain her cool and not to unnecessarily talk with Ran Singh's family. There is no doubt that PW-12 had also claimed that the matter was reconciled but that does not mean that Ran Singh and his family could not have been thereafter nursing any ill-will towards the complainant party within their hearts. Motive for any crime is normally hidden within the perpetrator of the crime and it is very difficult to get direct evidence about that. The manner in which Ran Singh and his sons behaved at the time of occurrence clearly shows that they were still having grievance against the complainant party for their having cut off the peepal tree which they(Ran Singh and family) were claiming to have been planted by their own ancestors. It is not in dispute that for many people peepal tree has special value. In the present case the complainant party has not claimed that the peepal tree had been planted by them. They have also not disputed the claim of the Ran Singh's family that it was planted by their ancestors. Complainant party has also not disputed that the house in which the peepal tree was there belonged to one Maha Singh, who was related to Ran Singh's family. In these circumstances, it can be safely said that Ran Singh's family must be having the grievance against Lakhan Singh and his family for their having cut off the peepal tree planted and grown up by their ancestors. There was, thus, a motive also for Ran Singh and his family to commit the crime. As far as Intezar Hussain is concerned there is no doubt that he had no prior enmity with the complainant party but even in the absence of any motive he could be held guilty relying upon the trustworthy evidence of the eye witnesses regarding his joining the other accused along with his brother Ansar in the assault on the deceased.

24. There is no doubt that the three eye witnesses were not shown the weapons of offence allegedly got recovered by two of the accused persons but that fact does not cause any dent in the prosecution case since from the evidence of the eye witnesses we have found that the injuries to the deceased were caused with sharp edged weapons, which according to the eye witnesses were churis, and also with dandas. The autopsy surgeon had opined that the fatal injury on the back of the chest of the deceased was caused by a sharp cutting penetrating weapon and injury on the chest also was caused by a similar kind of weapon while other injuries were caused by a hard blunt weapon and fist blows. During the investigation the autopsy surgeon had been shown the weapons of offence got

recovered by accused Kuldeep and Intezar Hussain and after seeing those recovered weapons the autopsy surgeon had opined that the injuries sustained by the deceased were possible with those weapons. In these circumstances, the absence of identification of the recovered weapons by the three eye witnesses in Court during their evidence is of no consequence. Here we may make a useful reference to a judgment of the Hon'ble Supreme Court in *State of Rajasthan v. Dhool Singh* : 2004 CriLJ931 wherein also a similar objection was raised but was rejected. In that case the fatal injury was caused with a sword and the accused had got recovered one sword. The autopsy surgeon had opined that the injuries on the deceased were caused by a sharp edged weapon. The sword got recovered by the accused was not produced in Court. It was argued before the Hon'ble Supreme Court on behalf of the convicted accused that non-production of the sword and the prosecution not getting it identified from the concerned witnesses should lead to the conclusion that the prosecution had failed to establish the fact that the accused had caused the fatal injury with a sword. Hon'ble Supreme Court repelled that argument and held that even if the prosecution had not established that the fatal injury was caused by a particular sword that would not make the prosecution case doubtful because it had been established from evidence of the witnesses that the accused had caused the fatal injury with a sharp edged cutting weapon. So, in the present case also the prosecution case cannot be doubted for the reason that the weapons of offence were not shown to the eye witnesses during their evidence.

25. Having reached the afore-said conclusions that in the incident accused Ran Singh, his sons Kuldeep and Lalit and accused Intezar Hussain and the proclaimed offender had participated in the manner stated by the three eye witnesses the next question which now arises for consideration is the applicability of Section 149 IPC. It is the prosecution case that the initial incident took place only between appellant - accused Intezar Hussain and his brother Ansar(proclaimed offender) on one side and PW-12 Lakhan Singh on the other side on account of parking of rehris by Intezar Hussain in front of the house of Lakhan Singh and, therefore, it is clear that at that time there was no unlawful assembly since for an unlawful assembly as contemplated under Section 141 IPC there has to be a group of minimum five persons getting together, inter-alia, to

commit some offence. However, when accused Ran Singh along with his sons Kuldeep and Lalit came to the spot and started assaulting the deceased and his father and Intezar Hussain and his brother(proclaimed offender) also joined that assault on the deceased by giving him danda blows and also by beating PW-12 Lakhan Singh with dandas at that stage these five persons definitely constituted an unlawful assembly for committing an offence.

26. It was also the submission of the learned Counsel for the appellants that the common object of the unlawful assembly, in any event, could not be said to be to cause the death of Yoginder considering the fact that the injuries were not caused on any vital part of the body of the deceased and at the most it can be said to be to cause injuries to all the family members of Lakhan Singh and, therefore, all the accused persons could not be held responsible for the fatal injury caused by accused Kuldeep . We, do not subscribe to this argument. In order to find out as to what was the common object of an unlawful assembly the conduct of the members of the assembly at the scene of occurrence, weapons used by them and the nature of injuries inflicted by them can be considered as indicators of their object which can even be formed on the spur of the moment also. No prior concert is necessary. In our view, considering the fact that accused Kuldeep and Lalit were having churis in their hands and immediately on coming to the spot accused Ran Singh caught hold of the deceased Yoginder, who had in the mean time come out of his house to save his father, and then accused Lalit gave a knife blow on the chest of Yoginder and Kuldeep gave a knife blow on the back side of the chest, which injury was found to be sufficient to cause death in the ordinary course of nature, and Intezar Hussain and his brother also gave danda blows to the deceased there can be no manner of doubt that the common object of that unlawful assembly which developed at that time was to cause the death of Yoginder and injuries to his parents. That is also evident from the fact that when the father of the deceased had tried to save him from the assault he was also beaten up.

27. For the fore-going reasons, we do not find any merit in the challenge of appellants Ran Singh, Kuldeep, Lalit and Intezar Hussan to their convictions under Sections 302/323/149 IPC and as a consequence of this finding of ours the

conviction of appellants Ran Singh, Kuldeep, Lalit and Intezar Hussain has to be upheld. However, as far as appellants Rajbala and Rupesh are concerned, they deserve to be acquitted by giving them the benefit of doubt.

28. In the result, we allow Criminal Appeal No. 640/04 partly by acquitting appellants Rajbala and Rupesh of all the charges. The conviction of appellants Ran Singh, Kuldeep and Lalit under Sections 302/323/149 IPC and the sentences awarded to them are maintained. Criminal Appeal No. 722/04 of Intezar Hussain is dismissed. Appellants Ran Singh and Intezar Hussain are stated to be on bail but now as a result of dismissal of their appeal they shall be taken into custody immediately to serve out the sentences awarded to them by the trial Court and upheld by this Court and compliance report shall be submitted to this Court within a month. Other three appellants, namely, Kuldeep, Lalit and Rupesh are stated to be already in jail. Since Rupesh stands acquitted he shall be released forthwith, if not required to be detained for any other crime.

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